

Introduced by Senator Pavley

February 7, 2011

An act to amend Section 3000 of the Penal Code, and to amend Section 6601 of the Welfare and Institutions Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as introduced, Pavley. Sex offenders: parole.

Under existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, the parole period of any person found to be a sexually violent predator is tolled until that person is found to no longer be a sexually violent predator, as specified.

This bill instead would provide that for any person subject to a sexually violent predator proceeding, as specified, an order issued by a judge pursuant to specified provisions, finding that the petition supports a finding of probable cause to believe that the person is likely to engage in sexually violent criminal behavior upon his or her release, shall toll the period of parole of that person, from the date that person is released until a specified court order is entered.

Proposition 83 permits the Legislature, by a vote of $\frac{2}{3}$ of the membership of each house and in accordance with specified procedures, to amend the provisions of the act.

This bill would therefore require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the effective supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, or as otherwise provided in this article.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections and Rehabilitation for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Parole Hearings to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

~~(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.~~

(4) For any person subject to a sexually violent predator proceeding pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, an order issued by a judge pursuant to Section 6601.5 of the Welfare and Institutions Code, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release, shall toll the period of parole of that person, from the date that person is released by the Department of Corrections and Rehabilitation until a date determined as follows:

1 (A) *If the judge, following a probable cause hearing, dismisses*
2 *the petition under Section 6602 of the Welfare and Institutions*
3 *Code, the date the judge enters the order of dismissal.*

4 (B) *If the judge or jury is not satisfied beyond a reasonable*
5 *doubt that the person is a sexually violent predator under Section*
6 *6604 of the Welfare and Institutions Code, the date the judge enters*
7 *the order.*

8 (C) *If the person is committed to the State Department of Mental*
9 *Health as a sexually violent predator and subsequently a court*
10 *orders that the person be unconditionally discharged pursuant to*
11 *Section 6605 or 6608 of the Welfare and Institutions Code, the*
12 *date the judge enters the order.*

13 (b) Notwithstanding any provision to the contrary in Article 3
14 (commencing with Section 3040) of this chapter, the following
15 shall apply:

16 (1) In the case of any inmate sentenced under Section 1168, the
17 period of parole shall not exceed five years in the case of an inmate
18 imprisoned for any offense other than first or second degree murder
19 for which the inmate has received a life sentence, and shall not
20 exceed three years in the case of any other inmate, unless in either
21 case the parole authority for good cause waives parole and
22 discharges the inmate from custody of the department. This
23 subdivision shall also be applicable to inmates who committed
24 crimes prior to July 1, 1977, to the extent specified in Section
25 1170.2.

26 (2) At the expiration of a term of imprisonment of one year and
27 one day, or a term of imprisonment imposed pursuant to Section
28 1170 or at the expiration of a term reduced pursuant to Section
29 2931 or 2933, if applicable, the inmate shall be released on parole
30 for a period not exceeding three years, except that any inmate
31 sentenced for an offense specified in paragraph (3), (4), (5), (6),
32 (11), or (18) of subdivision (c) of Section 667.5 shall be released
33 on parole for a period not exceeding 10 years, unless a longer
34 period of parole is specified in Section 3000.1.

35 (3) Notwithstanding paragraphs (1) and (2), in the case of any
36 offense for which the inmate has received a life sentence pursuant
37 to subdivision (b) of Section 209, with the intent to commit a
38 specified sex offense, or Section 667.51, 667.61, or 667.71, the
39 period of parole shall be 10 years, unless a longer period of parole
40 is specified in Section 3000.1.

(4) (A) Notwithstanding paragraphs (1) to (3), inclusive, in the case of a person convicted of and required to register as a sex offender for the commission of an offense specified in Section 261, 262, 264.1, 286, 288a, paragraph (1) of subdivision (b) of Section 288, Section 288.5, or 289, in which one or more of the victims of the offense was a child under 14 years of age, the period of parole shall be 20 years unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of this determination and transmit a copy of it to the parolee.

(B) In the event of a retention on parole, the parolee shall be entitled to a review by the board each year thereafter.

(C) There shall be a hearing as provided in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(D) The provisions of Section 3042 shall not apply to any hearing held pursuant to this subdivision.

(5) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(6) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), (3), or (4), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), (3), and (4) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, the period of parole is subject to the following:

1 (A) Except as provided in Section 3064, in no case may a
2 prisoner subject to three years on parole be retained under parole
3 supervision or in custody for a period longer than four years from
4 the date of his or her initial parole.

5 (B) Except as provided in Section 3064, in no case may a
6 prisoner subject to five years on parole be retained under parole
7 supervision or in custody for a period longer than seven years from
8 the date of his or her initial parole.

9 (C) Except as provided in Section 3064, in no case may a
10 prisoner subject to 10 years on parole be retained under parole
11 supervision or in custody for a period longer than 15 years from
12 the date of his or her initial parole.

13 (7) The Department of Corrections and Rehabilitation shall meet
14 with each inmate at least 30 days prior to his or her good time
15 release date and shall provide, under guidelines specified by the
16 parole authority, the conditions of parole and the length of parole
17 up to the maximum period of time provided by law. The inmate
18 has the right to reconsideration of the length of parole and
19 conditions thereof by the parole authority. The Department of
20 Corrections and Rehabilitation or the Board of Parole Hearings
21 may impose as a condition of parole that a prisoner make payments
22 on the prisoner's outstanding restitution fines or orders imposed
23 pursuant to subdivision (a) or (c) of Section 13967 of the
24 Government Code, as operative prior to September 28, 1994, or
25 subdivision (b) or (f) of Section 1202.4.

26 (8) For purposes of this chapter, the Board of Parole Hearings
27 shall be considered the parole authority.

28 (9) The sole authority to issue warrants for the return to actual
29 custody of any state prisoner released on parole rests with the
30 Board of Parole Hearings, except for any escaped state prisoner
31 or any state prisoner released prior to his or her scheduled release
32 date who should be returned to custody, and Section 3060 shall
33 apply.

34 (10) It is the intent of the Legislature that efforts be made with
35 respect to persons who are subject to Section 290.011 who are on
36 parole to engage them in treatment.

37 SEC. 2. Section 6601 of the Welfare and Institutions Code, as
38 amended by Section 3 of Chapter 710 of the Statutes of 2010, is
39 amended to read:

6601. (a) (1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall

1 require assessment of diagnosable mental disorders, as well as
2 various factors known to be associated with the risk of reoffense
3 among sex offenders. Risk factors to be considered shall include
4 criminal and psychosexual history, type, degree, and duration of
5 sexual deviance, and severity of mental disorder.

6 (d) Pursuant to subdivision (c), the person shall be evaluated
7 by two practicing psychiatrists or psychologists, or one practicing
8 psychiatrist and one practicing psychologist, designated by the
9 Director of Mental Health, one or both of whom may be
10 independent professionals as defined in subdivision (g). If both
11 evaluators concur that the person has a diagnosed mental disorder
12 so that he or she is likely to engage in acts of sexual violence
13 without appropriate treatment and custody, the Director of Mental
14 Health shall forward a request for a petition for commitment under
15 Section 6602 to the county designated in subdivision (i). Copies
16 of the evaluation reports and any other supporting documents shall
17 be made available to the attorney designated by the county pursuant
18 to subdivision (i) who may file a petition for commitment.

19 (e) If one of the professionals performing the evaluation pursuant
20 to subdivision (d) does not concur that the person meets the criteria
21 specified in subdivision (d), but the other professional concludes
22 that the person meets those criteria, the Director of Mental Health
23 shall arrange for further examination of the person by two
24 independent professionals selected in accordance with subdivision
25 (g).

26 (f) If an examination by independent professionals pursuant to
27 subdivision (e) is conducted, a petition to request commitment
28 under this article shall only be filed if both independent
29 professionals who evaluate the person pursuant to subdivision (e)
30 concur that the person meets the criteria for commitment specified
31 in subdivision (d). The professionals selected to evaluate the person
32 pursuant to subdivision (g) shall inform the person that the purpose
33 of their examination is not treatment but to determine if the person
34 meets certain criteria to be involuntarily committed pursuant to
35 this article. It is not required that the person appreciate or
36 understand that information.

37 (g) Any independent professional who is designated by the
38 Secretary of the Department of Corrections and Rehabilitation or
39 the Director of Mental Health for purposes of this section shall not
40 be a state government employee, shall have at least five years of

1 experience in the diagnosis and treatment of mental disorders, and
2 shall include psychiatrists and licensed psychologists who have a
3 doctoral degree in psychology. The requirements set forth in this
4 section also shall apply to any professionals appointed by the court
5 to evaluate the person for purposes of any other proceedings under
6 this article.

7 (h) If the State Department of Mental Health determines that
8 the person is a sexually violent predator as defined in this article,
9 the Director of Mental Health shall forward a request for a petition
10 to be filed for commitment under this article to the county
11 designated in subdivision (i). Copies of the evaluation reports and
12 any other supporting documents shall be made available to the
13 attorney designated by the county pursuant to subdivision (i) who
14 may file a petition for commitment in the superior court.

15 (i) If the county's designated counsel concurs with the
16 recommendation, a petition for commitment shall be filed in the
17 superior court of the county in which the person was convicted of
18 the offense for which he or she was committed to the jurisdiction
19 of the Department of Corrections and Rehabilitation. The petition
20 shall be filed, and the proceedings shall be handled, by either the
21 district attorney or the county counsel of that county. The county
22 board of supervisors shall designate either the district attorney or
23 the county counsel to assume responsibility for proceedings under
24 this article.

25 (j) The time limits set forth in this section shall not apply during
26 the first year that this article is operative.

27 ~~(k) If the person is otherwise subject to parole, a finding or~~
28 ~~placement made pursuant to this article shall toll the term of An~~
29 ~~order issued by a judge pursuant to Section 6601.5, finding that~~
30 ~~the petition, on its face, supports a finding of probable cause to~~
31 ~~believe that the individual named in the petition is likely to engage~~
32 ~~in sexually violent predatory criminal behavior upon his or her~~
33 ~~release, shall toll that person's parole pursuant to Article 1~~
34 ~~(commencing with Section 3000) of Chapter 8 of Title 1 of Part~~
35 ~~3 paragraph (4) of subdivision (a) of Section 3000 of the Penal~~
36 ~~Code.~~

37 (l) Pursuant to subdivision (d), the attorney designated by the
38 county pursuant to subdivision (i) shall notify the State Department
39 of Mental Health of its decision regarding the filing of a petition
40 for commitment within 15 days of making that decision.

1 (m) (1) The department shall provide the fiscal and policy
2 committees of the Legislature, including the Chairperson of the
3 Joint Legislative Budget Committee, and the Department of
4 Finance, with a semiannual update on the progress made to hire
5 qualified state employees to conduct the evaluation required
6 pursuant to subdivision (d). The first update shall be provided no
7 later than July 10, 2009.

8 (2) On or before January 2, 2010, the department shall report
9 to the Legislature on all of the following:

10 (A) The costs to the department for the sexual offender
11 commitment program attributable to the provisions in Proposition
12 83 of the November 2006 general election, otherwise known as
13 Jessica's Law.

14 (B) The number and proportion of inmates evaluated by the
15 department for commitment to the program as a result of the
16 expanded evaluation and commitment criteria in Jessica's Law.

17 (C) The number and proportion of those inmates who have
18 actually been committed for treatment in the program.

19 (3) This section shall remain in effect and be repealed on the
20 date that the director executes a declaration, which shall be
21 provided to the fiscal and policy committees of the Legislature,
22 including the Chairperson of the Joint Legislative Budget
23 Committee, and the Department of Finance, specifying that
24 sufficient qualified state employees have been hired to conduct
25 the evaluations required pursuant to subdivision (d), or January 1,
26 2012, whichever occurs first.

27 SEC. 3. Section 6601 of the Welfare and Institutions Code, as
28 amended by Section 4 of Chapter 710 of the Statutes of 2010, is
29 amended to read:

30 6601. (a) (1) Whenever the Secretary of the Department of
31 Corrections and Rehabilitation determines that an individual who
32 is in custody under the jurisdiction of the Department of
33 Corrections and Rehabilitation, and who is either serving a
34 determinate prison sentence or whose parole has been revoked,
35 may be a sexually violent predator, the secretary shall, at least six
36 months prior to that individual's scheduled date for release from
37 prison, refer the person for evaluation in accordance with this
38 section. However, if the inmate was received by the department
39 with less than nine months of his or her sentence to serve, or if the
40 inmate's release date is modified by judicial or administrative

1 action, the secretary may refer the person for evaluation in
2 accordance with this section at a date that is less than six months
3 prior to the inmate's scheduled release date.

4 (2) A petition may be filed under this section if the individual
5 was in custody pursuant to his or her determinate prison term,
6 parole revocation term, or a hold placed pursuant to Section 6601.3,
7 at the time the petition is filed. A petition shall not be dismissed
8 on the basis of a later judicial or administrative determination that
9 the individual's custody was unlawful, if the unlawful custody was
10 the result of a good faith mistake of fact or law. This paragraph
11 shall apply to any petition filed on or after January 1, 1996.

12 (b) The person shall be screened by the Department of
13 Corrections and Rehabilitation and the Board of Parole Hearings
14 based on whether the person has committed a sexually violent
15 predatory offense and on a review of the person's social, criminal,
16 and institutional history. This screening shall be conducted in
17 accordance with a structured screening instrument developed and
18 updated by the State Department of Mental Health in consultation
19 with the Department of Corrections and Rehabilitation. If as a
20 result of this screening it is determined that the person is likely to
21 be a sexually violent predator, the Department of Corrections and
22 Rehabilitation shall refer the person to the State Department of
23 Mental Health for a full evaluation of whether the person meets
24 the criteria in Section 6600.

25 (c) The State Department of Mental Health shall evaluate the
26 person in accordance with a standardized assessment protocol,
27 developed and updated by the State Department of Mental Health,
28 to determine whether the person is a sexually violent predator as
29 defined in this article. The standardized assessment protocol shall
30 require assessment of diagnosable mental disorders, as well as
31 various factors known to be associated with the risk of reoffense
32 among sex offenders. Risk factors to be considered shall include
33 criminal and psychosexual history, type, degree, and duration of
34 sexual deviance, and severity of mental disorder.

35 (d) Pursuant to subdivision (c), the person shall be evaluated
36 by two practicing psychiatrists or psychologists, or one practicing
37 psychiatrist and one practicing psychologist, designated by the
38 Director of Mental Health. If both evaluators concur that the person
39 has a diagnosed mental disorder so that he or she is likely to engage
40 in acts of sexual violence without appropriate treatment and

1 custody, the Director of Mental Health shall forward a request for
2 a petition for commitment under Section 6602 to the county
3 designated in subdivision (i). Copies of the evaluation reports and
4 any other supporting documents shall be made available to the
5 attorney designated by the county pursuant to subdivision (i) who
6 may file a petition for commitment.

7 (e) If one of the professionals performing the evaluation pursuant
8 to subdivision (d) does not concur that the person meets the criteria
9 specified in subdivision (d), but the other professional concludes
10 that the person meets those criteria, the Director of Mental Health
11 shall arrange for further examination of the person by two
12 independent professionals selected in accordance with subdivision
13 (g).

14 (f) If an examination by independent professionals pursuant to
15 subdivision (e) is conducted, a petition to request commitment
16 under this article shall only be filed if both independent
17 professionals who evaluate the person pursuant to subdivision (e)
18 concur that the person meets the criteria for commitment specified
19 in subdivision (d). The professionals selected to evaluate the person
20 pursuant to subdivision (g) shall inform the person that the purpose
21 of their examination is not treatment but to determine if the person
22 meets certain criteria to be involuntarily committed pursuant to
23 this article. It is not required that the person appreciate or
24 understand that information.

25 (g) Any independent professional who is designated by the
26 Secretary of the Department of Corrections and Rehabilitation or
27 the Director of Mental Health for purposes of this section shall not
28 be a state government employee, shall have at least five years of
29 experience in the diagnosis and treatment of mental disorders, and
30 shall include psychiatrists and licensed psychologists who have a
31 doctoral degree in psychology. The requirements set forth in this
32 section also shall apply to any professionals appointed by the court
33 to evaluate the person for purposes of any other proceedings under
34 this article.

35 (h) If the State Department of Mental Health determines that
36 the person is a sexually violent predator as defined in this article,
37 the Director of Mental Health shall forward a request for a petition
38 to be filed for commitment under this article to the county
39 designated in subdivision (i). Copies of the evaluation reports and
40 any other supporting documents shall be made available to the

1 attorney designated by the county pursuant to subdivision (i) who
2 may file a petition for commitment in the superior court.

3 (i) If the county's designated counsel concurs with the
4 recommendation, a petition for commitment shall be filed in the
5 superior court of the county in which the person was convicted of
6 the offense for which he or she was committed to the jurisdiction
7 of the Department of Corrections and Rehabilitation. The petition
8 shall be filed, and the proceedings shall be handled, by either the
9 district attorney or the county counsel of that county. The county
10 board of supervisors shall designate either the district attorney or
11 the county counsel to assume responsibility for proceedings under
12 this article.

13 (j) The time limits set forth in this section shall not apply during
14 the first year that this article is operative.

15 (k) ~~If the person is otherwise subject to parole, a finding or~~
16 ~~placement made pursuant to this article shall toll the term of An~~
17 ~~order issued by a judge pursuant to Section 6601.5, finding that~~
18 ~~the petition, on its face, supports a finding of probable cause to~~
19 ~~believe that the individual named in the petition is likely to engage~~
20 ~~in sexually violent predatory criminal behavior upon his or her~~
21 ~~release, shall toll that person's parole pursuant to Article 1~~
22 ~~(commencing with Section 3000) of Chapter 8 Title 1 of Part 3~~
23 ~~paragraph (4) of subdivision (a) of Section 3000 of the Penal Code.~~

24 (l) Pursuant to subdivision (d), the attorney designated by the
25 county pursuant to subdivision (i) shall notify the State Department
26 of Mental Health of its decision regarding the filing of a petition
27 for commitment within 15 days of making that decision.

28 (m) This section shall become operative on the date that the
29 director executes a declaration, which shall be provided to the
30 fiscal and policy committees of the Legislature, including the
31 Chairperson of the Joint Legislative Budget Committee, and the
32 Department of Finance, specifying that sufficient qualified state
33 employees have been hired to conduct the evaluations required
34 pursuant to subdivision (d), or January 1, 2012, whichever occurs
35 first.